

Assembly Bill No. 2781

CHAPTER 797

An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

[Approved by Governor September 29, 2006. Filed with
Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2781, Leno. Child support collectors.

Existing law governs the collection of child support by local child support agencies, or by means of a writ of execution, a notice of levy, or an earnings assignment order.

This bill would enact provisions regulating the activities of private child support collectors, as defined. Among other things, the bill would require a private child support collector to provide specified notices and disclosures to the child support obligee in a written contract and additional information about child support payments during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to child support agencies and other governmental entities, and prescribe procedures and remedies for enforcement of the provisions of the act. The bill would also require that every court order for child support issued on or after January 1, 2010, and every child support agreement providing for the payment of child support approved by the court on or after January 1, 2010, include a separate money judgment owed by the child support obligor to pay a fee not to exceed a specified amount. This money judgment would be in favor of the private child support collector and the child support obligee, jointly, as specified. The bill would also establish requirements relating to the conduct and compensation of attorneys who are private child support collectors.

The people of the State of California do enact as follows:

SECTION 1. Chapter 9 (commencing with Section 5610) is added to Part 5 of Division 9 of the Family Code, to read:

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. For the purposes of this chapter, "private child support collector" means any individual, corporation, attorney, nonprofit organization, or other nongovernmental entity who is engaged by an obligee to collect

child support ordered by a court or other tribunal for a fee or other consideration. The term does not include any attorney who addresses issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under Division 10 (commencing with Section 6200), a proceeding for dissolution of marriage, legal separation, or nullity of marriage, or in postjudgment or modification proceedings related to any of those actions. A “private child support collector” includes any private, nongovernmental attorney whose business is substantially comprised of the collection or enforcement of child support. As used in this section, substantially means that at least 50 percent of the attorney’s business, either in terms of remuneration or time spent, is comprised of the activity of seeking to collect or enforce child support obligations for other individuals.

5611. (a) Any contract for the collection of child support between a private child support collector and an obligee shall be in writing and written in simple language, in at least 10-point type, signed by the private child support collector and the obligee. The contract shall be delivered to the obligee in a paper form that the obligee may retain for his or her records. The contract shall include all of the following:

(1) An explanation of the fees imposed by contract and otherwise permitted by law and an example of how they are calculated and deducted.

(2) A statement that the amount of fees to be charged is set by the agency and is not set by state law.

(3) A statement that the private child support collector cannot charge fees on current support if the obligee received any current child support during the 6 months preceding execution of the contract with the private collector.

(4) An explanation of the nature of the services to be provided.

(5) The expected duration of the contract, stated as a length of time or as an amount to be collected by the collection agency.

(6) An explanation of the opportunities available to the obligee or private child support collector to cancel the contract or other conditions under which the contract terminates.

(7) The mailing address, street address, telephone numbers, facsimile numbers, and Internet address or location of the private child support collector.

(8) A statement that the private child support collector is not a governmental entity and that governmental entities in California provide child support collection and enforcement services free of charge.

(9) A statement that the private child support collector collects only money owed to the obligee and not support assigned to the state or county due to the receipt of CalWORKs or Temporary Assistance to Needy Families.

(10) A statement that the private child support collector will not retain fees from collections that are primarily attributable to the actions of a governmental entity or any other person or entity and is required by law to refund any fees improperly retained.

(11) A statement that the obligee may continue to receive, or may pursue, services through a governmental entity to collect support, and the private child support collection agency will not require or request that the obligee cease or refrain from engaging those services.

(12) A notice that the private child support collector is required to keep and maintain case records for a period of four years and four months, after the expiration of the contract and may thereafter destroy or otherwise dispose of the records. The obligee may, prior to destruction or disposal, retrieve those portions of the records that are not confidential.

(13) A “Notice of Cancellation,” which shall be included with the contract and which shall contain, in the same size font as the contract, the following statement, written in the same language as the contract:

“Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within 15 business days from the date the contract is signed or you receive this notice, whichever is later, or at any time if the private child support collector commits a material breach of any provision of the contract or a material violation of any provision of this chapter with respect to the obligee or the obligor, or _____ (all other reasons for cancellation permitted).

To cancel this contract, mail or deliver a signed copy of this cancellation notice or any other written notice to _____ (name of private child support collector) at _____

_____ (address for mail or delivery) no later than midnight on _____ (date).

I am canceling this contract. _____ (date)

_____ (signature)”

(14) The following statement by the obligee on the first page of the contract:

“I understand that this contract calls for (name of private child support collector) to collect money owed to me, and not money owed to the state or county. If child support is owed to the state or county because I am receiving or have received program benefits from CalWORKs or Temporary Assistance to Needy Families, then (name of private child support collector) cannot collect that money for me. If I start to receive program benefits from CalWORKs or Temporary Assistance to Needy Families during this contract, I must notify (name of private child support collector) in writing.”

“I declare by my signature below that the child support to be collected for me pursuant to this contract is not assigned to the state or county as of the time I sign this contract. I agree that I will give written notice to the private child support collector if I apply for program benefits under CalWORKs or Temporary Assistance to Needy Families during the term of this contract.”

(15) (A) The following statement by the obligee immediately above the signature line of the contract:

“I understand that (name of private child support collector) will charge a fee for all the current child support and arrears it collects for me until the entire contract amount is collected or the contract terminates for another reason. I also understand that depending on the frequency and size of payments, it could take years for the amount specified in my contract to be collected. This means that if (name of private child support collector) is collecting my current support by wage withholding or other means, I will not receive the full amount of my periodic court-ordered current support until the contract terminates since (name of private child support collector) will be deducting its fee from the periodic court-ordered current support it collects for me.”

(B) The statement required by subparagraph (A) shall:

(i) Be in a type size that is at least equal to one-quarter of the largest type size used in the contract. In no event shall the disclosure be printed in less than 8-point type.

(ii) Be in a contrasting style, and contrasting color or bold type, which is equally or more visible than the type used in the contract.

(b) The disclosures required by paragraph (1) of subdivision (a) of Section 5612 shall be printed in the contract, as follows:

(1) In a type size that is at least equal to one-quarter of the largest type size used in the contract. In no event shall the disclosure be printed in less than 8-point type.

(2) In a contrasting style, and contrasting color or bold type that is equally or more visible than the type used in the contract.

(3) Immediately above, below, or beside the stated fee without any intervening words, pictures, marks, or symbols.

(4) In the same language as the contract.

5612. (a) Each private child support collector:

(1) That charges any initial fee, processing fee, application fee, filing fee, or other fee or assessment that must be paid by an obligee regardless of whether any child support collection is made on behalf of the obligee shall make the following disclosure in every radio, television, or print advertisement intended for a target audience consisting primarily of California residents:

“(Name of private child support collector) is not a governmental entity and charges an upfront fee for its services even if it does not collect anything.”

(2) That does not charge any fee or assessment specified in paragraph (1) shall make the following disclosure in every radio, television, or print advertisement aired for a target audience consisting primarily of California residents:

“(Name of private child support collector) is not a governmental entity and charges a fee for its services.”

(b) The disclosures required in subdivision (a) shall also be stated during the first 30 seconds of any initial telephone conversation with an obligee and in the private child support collector's contract.

5613. (a) An obligee shall have the right to cancel a contract with a private support collector under either of the following circumstances:

(1) Within 15 business days of the later of signing the contract, or receiving a blank notice of cancellation form, or at any time if the private child support collector commits a material breach of any provision of the contract or a material violation of any provision of this chapter with respect to the obligee or the obligor.

(2) At the end of any 12-month period in which the total amount collected by the private child support collector is less than 50 percent of the amount scheduled to be paid under a payment plan.

(b) A contract shall automatically terminate when the contract term has expired or the contract amount has been collected, whichever occurs first.

5614. (a) A private child support collector shall do all of the following:

(1) (A) Provide to an obligee all of the following information:

(i) The name of, and any other identifying information relating to, any obligor who made child support payments collected by the private child support collector.

(ii) The amount of support collected by the private child support collector.

(iii) The date on which each amount was received by the private child support collector.

(iv) The date on which each amount received by the private child support collector was sent to the obligee.

(v) The amount of the payment sent to the obligee.

(vi) The source of payment of support collected and the actions affirmatively taken by the private child support collector that resulted in the payment.

(vii) The amount and percentage of each payment kept by the private child support collector as its fee.

(B) The information required by paragraph (A) shall be made available, at the option of the obligee, by mail, telephone, or via secure Internet access. If provided by mail, the notice shall be sent at least quarterly and, if provided by any other method, the information shall be updated and made available at least monthly. Information accessed by telephone and the Internet shall be up to date.

(2) Establish a direct deposit account with the state disbursement unit and shall within two business days from the date the funds are dispersed from the state disbursement unit to the private child support collector, if a portion of the funds constitute an obligor's fee, notify the Department of Child Support Services of the portion of each collection that constitutes a fee. The notification shall be sent by the private child support collector to the department in an electronic format to be determined by the department.

(3) Maintain records of all child support collections made on behalf of a client who is an obligee. The records required under this section shall be

maintained by the private child support collector for the duration of the contract plus a period of four years and four months from the date of the last child support payment collected by the private child support collector on behalf of an obligee. In addition to information required by paragraph (1), the private child support collector shall maintain the following:

(A) A copy of the order establishing the child support obligation under which a collection was made by the private child support collector.

(B) Records of all correspondence between the private child support collector and the obligee or obligor in a case.

(C) Any other pertinent information relating to the child support obligation, including any case, cause, or docket number of the court having jurisdiction over the matter and official government payment records obtained by the private child support collector on behalf of, and at the request of, the obligee.

(4) Safeguard case records in a manner reasonably expected to prevent intentional or accidental disclosure of confidential information pertaining to the obligee or obligor, including providing necessary protections for records maintained in an automated system.

(5) Ensure that every person who contracts with a private child support collector has the right to review all files and documents, both paper and electronic, in the possession of the private child support collector for the information specified in this paragraph regarding that obligee's case that are not required by law to be kept confidential. The obligee, during regular business hours, shall be provided reasonable access to and copies of the files and records of the private child support collector regarding all moneys received, collection attempts made, fees retained or paid to the private child support collector, and moneys disbursed to the obligee. The private child support collector may not charge a fee for access to the files and records, but may require the obligee to pay up to three cents (\$0.03) per page for the copies prior to their release.

(6) Provide, prior to commencing collection activities, written notice of any contract with an obligee to the local child support agency that is enforcing the obligee's support order, if known, or the local child support agency for the county in which the obligee resides as of the time the contract is signed by the obligee. The notice shall identify the obligee, the obligor, and the amount of the arrearage claimed by the obligee.

(b) A private child support collector shall not do any of the following:

(1) Charge fees on current support if the obligee received any current child support during the six months preceding execution of the contract with the private child support collector. A private child support collector shall inquire of the obligee and record the month and year of the last current support payment and may rely on information provided by the obligee in determining whether a fee may be charged on current support.

(2) Improperly retain fees from collections that are primarily attributable to the actions of a governmental entity. The private child support collector shall refund all of those fees to the obligee immediately upon discovery or notice of the improper retention of fees.

(3) Collect or attempt to collect child support by means of any conduct that is prohibited of a debt collector collecting a consumer debt under Sections 1788.10 to 1788.16, inclusive, of the Civil Code. This chapter does not modify, alter, or amend the definition of a debt or a debt collector under the Rosenthal Fair Debt Collection Practices Act, Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code.

(4) Misstate the amount of the fee that may be lawfully paid to the private child support collector for the performance of the contract or the identity of the person who is obligated to pay that fee.

(5) Make a false representation of the amount of child support to be collected. A private child support collector is not in violation of this paragraph if it reasonably relied on sufficient documentation provided by the government entity collecting child support, a court with jurisdiction over the support obligation, or from the obligee, or upon sufficient documentation provided by the obligor.

(6) Ask any party other than the obligor to pay the child support obligation, unless that party is legally responsible for the obligation or is the legal representative of the obligor.

(7) Require, on or after January 1, 2007, as a condition of providing services to the obligee, that the obligee waive any right or procedure provided for in any state law regarding the right to file and pursue a civil action, or that the obligee agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California, as provided by law. Any waiver by the obligee of the right to file and pursue a civil action, the right to file and pursue a civil action in California, or the right to rely upon California law as provided by law must be knowing, voluntary, and not made a condition of doing business with the private child support collector. Any waiver, including, but not limited to, an agreement to arbitrate or regarding choice of forum or choice of law, that is required as a condition of doing business with the private child support collector, shall be presumed involuntary, unconscionable, against public policy, and unenforceable. The private child support collector has the burden of proving that any waiver of rights, including any agreement to arbitrate a claim or regarding choice of forum or choice of law, was knowing, voluntary, and not made a condition of the contract with the obligee.

5615. (a) (1) A person may bring an action for actual damages incurred as a result of a violation of this chapter.

(2) In addition to actual damages, a private child support collector who willfully and knowingly violates the provisions of this chapter shall be liable for a civil penalty in an amount determined by the court, which may not be less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(3) (A) The prevailing party in any action pursuant to this chapter shall be entitled to recover the costs of the action. Reasonable attorney's fees, which shall be based on the time necessarily expended to enforce the liability, shall be awarded to a prevailing party, other than the private child

support collector, asserting rights under this chapter. Reasonable attorney's fees may be awarded to a prevailing private child support collector if the court finds that the party bringing the action did not prosecute the action in good faith.

(B) In an action by an obligor under this chapter, the private child support collector shall have no civil liability under this chapter to the obligor under any circumstance in which a debt collector would not have civil liability under Section 1788.30 of the Civil Code.

(4) A private child support collector is not in violation of this chapter if the private child support collector shows, by a preponderance of the evidence, that the action complained of was not intentional and resulted from a bona fide error that occurred notwithstanding the use of reasonable procedures to avoid the error.

(5) The remedies provided in this section are cumulative and are in addition to any other procedures, rights, or remedies available under any other law.

(b) Any waiver of the rights, requirements, and remedies provided by this chapter violates public policy and is void.

(c) Notwithstanding any other provision of this chapter, including provisions establishing a right of cancellation and requiring notice thereof, any contract for the collection of child support between an attorney who is a "private child support collector" pursuant to Section 5610 shall conform to the statutes, rules, and case law governing attorney conduct, including the provisions of law providing that a contract with an attorney is cancelable by the attorney's client at any time. Upon cancellation of that contract, the attorney may seek compensation as provided by law, including, if applicable, a claim for the reasonable value of any services rendered to the attorney's client pursuant to the doctrine of quantum meruit, provided those services lead to the collection of support and the compensation is limited to what would have been collected had the contract been in effect. To the extent that the provisions of this chapter are in conflict with the provisions of state law governing the conduct of attorneys, this chapter shall control. If there is no conflict, an attorney who is a "private child support collector" pursuant to Section 5610 shall conform to the provisions of this chapter.

5616. (a) Every court order for child support issued on or after January 1, 2010, and every child support agreement providing for the payment of child support approved by a court on or after January 1, 2010, shall include a separate money judgment owed by the child support obligor to pay a fee not to exceed 33 and $\frac{1}{3}$ percent of the total amount in arrears, and not to exceed 50 percent of the fee as charged by a private child support collector pursuant to a contract complying with the requirements of this chapter and any other child support collections costs expressly permitted by the child support order for the collection efforts undertaken by the private child support collector. The money judgment shall be in favor of the private child support collector and the child support obligee, jointly, but shall not constitute a private child support collector lien on real property unless an

abstract of judgment is recorded pursuant to subdivision (d). Except as provided in subdivision (c), the money judgement may be enforced by the private child support collector by any means available to the obligee for the enforcement of the child support order without any additional action or order by the court. Nothing in this chapter shall be construed to grant the private child support collector any enforcement remedies beyond those authorized by federal or state law. Any fee collected from the obligor pursuant to a contract complying with the requirements of this chapter, shall not constitute child support.

(b) If the child support order makes the obligor responsible for payment of collection fees and costs, fees that are deducted by a private child support collector may not be credited against child support arrearages or interest owing on arrearages or any other money owed by the obligor to the obligee.

(c) If the order for child support requires payment of collection fees and costs by the obligor, then not later than five days after the date that the private child support collector makes its first collection, written notice shall be provided to the obligor of (1) the amount of arrearages subject to collection, (2) the amount of the collection that shall be applied to the arrearage, and (3) the amount of the collection that shall be applied to the fees and costs of collection. The notice shall provide that, in addition to any other procedures available, the obligor has 30 days to file a motion to contest the amount of collection fees and costs assessed against the obligor.

(d) Any fees or monetary obligations resulting from the contract between an obligee parent and a private child support collector, or moneys owed to a private child support collector by the obligor parent or obligee parent as a result of the private child support collector's efforts, does not create a lien on real property, unless an abstract of judgment is obtained from the court and recorded by the private child support collector against the real property in the county in which it is located, nor shall that amount be added to any existing lien created by a recorded abstract of support or be added to an obligation on any abstract of judgment. A private child support collector lien shall have the force, effect, and priority of a judgment lien.

(e) An assignment to a private child support collector is a voluntary assignment for the purpose of collecting the domestic support obligation as defined in Section 101 of Title 11 of the United States Bankruptcy Code (11 U.S.C. Section 101 (14 A)).